

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re

Case No. 19-43516-ess

MICHAEL KRICHEVSKY,

Chapter 11

Debtor.

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ORDER DENYING THE DEBTOR’S EMERGENCY RULE 2004 EXAM REQUEST

WHEREAS, on June 6, 2019, Michael Krichevsky (the “Debtor”) filed a petition for relief under Chapter 13 of the Bankruptcy Code; and

WHEREAS, on October 8, 2019, the Court entered an order converting the Debtor’s case to one under Chapter 11 of the Bankruptcy Code; and

WHEREAS, on August 15, 2019, Wells Fargo, N.A. (“Wells Fargo”), as servicing agent for U.S. Bank, N.A. (“U.S. Bank”), filed a proof of claim in the amount of \$1,098,754.69 secured against real property located at 4221 Atlantic Avenue, Brooklyn, NY 11224 (the “Property”) on behalf of U.S. Bank, as Trustee for Banc of America Funding Corporation Mortgage Pass-Through Certificates, Series 2006-F (the “Proof of Claim”); and

WHEREAS, on March 17, 2020, Wells Fargo filed a motion for stay relief with respect to the Property; and

WHEREAS, on May 19, 2020, the Debtor filed a “Cross Motion to Strike and Dismiss with Prejudice Chapter 11 Proof of Claim Filed By US Bank, NA and Wells Fargo Bank, NA, and Opposition to Motion for Relief From Automatic Stay” (the “Motion to Strike”); and

WHEREAS, on May 21, 2020, Wells Fargo filed an amended proof of claim (the “Amended Proof of Claim”); and

WHEREAS, on June 5, 2020, Wells Fargo filed opposition to the Motion to Strike; and

WHEREAS, on June 16, 2020, the Court entered an order modifying the automatic stay to permit Wells Fargo to pursue its rights under applicable law with respect to the Property (the “Stay Relief Order”); and

WHEREAS, on June 25, 2020, the Debtor filed a notice of appeal to the District Court; and

WHEREAS, on October 16, 2020, the Debtor filed an amended Motion to Strike (the “Amended Motion to Strike”); and

WHEREAS, on November 13, 2020, Wells Fargo filed an objection and declaration of Natsayi Mawere, Esq. in opposition to the Amended Motion to Strike; and

WHEREAS, on November 13, 2020, Select Portfolio Servicing, Inc. (“SPS”) filed limited opposition to the Amended Motion to Strike; and

WHEREAS, on March 22, 2021, the District Court entered a memorandum and order affirming the Stay Relief Order and dismissing the Debtor’s appeal. *Krichevsky v. U.S. Bank, N.A.*, 1:20-cv-02343-AMD (E.D.N.Y.), ECF No. 16; and

WHEREAS, on April 13, 2021, the Debtor filed a reply to Wells Fargo’s objection to the Amended Motion to Strike; and

WHEREAS, on April 14, 2021, the Debtor filed an “Amended Objection to Proof of Claim, Memorandum of Law and Amended Reply Affidavit in Opposition to Wells Fargo Bank, Alleged Attorneys and US Bank as Trustee Motion for Relief of Automatic Stay” (the “Second Amended Motion to Strike”); and

WHEREAS, on May 25, 2021, Wells Fargo filed a response to the Second Amended Motion to Strike; and

WHEREAS, on May 28, 2021, the Court held a hearing on the Second Amended Motion to Strike, at which the United States Trustee (the “UST”), the Debtor, Wells Fargo, U.S. Bank, Wells Fargo Home Mortgage, Kelly Duncan, Stephanie Terese Tautge, Daniel V. Edward, Banc of America Funding Corporation, Charice Lenise Gladden, Woods Oviatt Gilman, LLP (“Woods”), Donald W. O’Brien, Jr., Esq., Aleksandra K. Fugate, Esq., Brittany J. Maxon, Esq., David Bruce Wildermuth, Esq., Brettanie L. Hart Saxton, Esq., Victoria E. Munian, Esq., Michael Thomas Jablonski, Esq., Miranda L. Sharlette a/k/a Miranda Jakubec, Esq., Frenkel Lambert Weiss Weisman & Gordon, LLP (“FLW”), Barry M. Weiss, Esq., ProVest LLC, Woody Dorsonne, Reed Smith LLP, Ms. Mawere, Jennifer L. Achilles, Esq., Steven J. Baum, P.C., Elpiniki M. Bechakas, Esq., Jeremiah Herberg, and Natalie A. Grigg, Esq. appeared and were heard, and the Court closed the record and reserved decision; and

WHEREAS, on May 28, 2021, the Debtor filed an “Emergency Ex Parte Application of Chapter 11 Trustee Pursuant to Bankruptcy Rule 2004 for an Order Authorizing the Issuance of Subpoenas for the Production of Documents and Deposition Testimony and Proposed Order” (the “Emergency Rule 2004 Exam Request”), which was not noticed for a hearing; and

WHEREAS, on May 30, 2021, the Debtor filed an affidavit and memorandum of law in support of the Emergency Rule 2004 Exam Request; and

WHEREAS, on June 14, 2021, the Court entered an order scheduling a hearing on the Emergency Rule 2004 Exam Request for July 1, 2021; and

WHEREAS, on June 17, 2021, the Court entered an order denying the Debtor’s Second Amended Motion to Strike; and

WHEREAS, on June 28, 2021, U.S. Bank and Wells Fargo filed and served a memorandum of law in opposition to the Emergency Rule 2004 Exam Request (the “Opposition”); and

WHEREAS, on July 1, 2021, the Court held a hearing on the Emergency Rule 2004 Exam Request, at which the UST, the Debtor, Ms. Bechakas, FLW, Woods, Wells Fargo, and SPS appeared and were heard; and

WHEREAS, on July 6, 2021, the Court entered an order scheduling a continued hearing on the Emergency Rule 2004 Exam Request for July 28, 2021; and

WHEREAS, on July 15, 2021, the Debtor filed an “Ex-Parte Motion to Strike and Objection to Alleged Attorneys Reply to Emergency Ex Parte Application of Chapter 11 Trustee Pursuant to Bankruptcy Rule 2004 for an Order Authorizing the Issuance of Subpoenas for the Production of Documents and Depositions of Testimony” in reply to the Opposition; and

WHEREAS, on July 28, 2021, the Court held a hearing on the Emergency Rule 2004 Exam Request, at which the UST, the Debtor, Wells Fargo, U.S. Bank, Ms. Duncan, Ms. Tautge, Mr. Edward, Banc of America Funding Corporation, Ms. Gladden, Woods, Mr. O’Brien, Jr., Ms. Fugate, Ms. Maxon, Mr. Wildermuth, Ms. Hart Saxton, Ms. Munian, Mr. Jablonski, Ms. Sharlette a/k/a Ms. Jakubec, FLW, Mr. Weiss, ProVest LLC, Mr. Dorsonne, Reed Smith LLP, Ms. Mawere, Ms. Achilles, Steven J. Baum, P.C., Mr. Baum, Ms. Bechakas, Mr. Herberg, Ms. Grigg, and SPS appeared and were heard; and

WHEREAS, at the July 28, 2021 hearing, the Court denied the Emergency Rule 2004 Exam Request because, among other reasons, the Emergency Rule 2004 Exam Request seeks information that concerns whether the Amended Proof of Claim is a valid proof of claim, and

that question has been addressed and determined by this Court in the order denying the Second Amended Motion to Strike; and

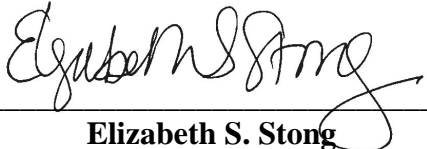
WHEREAS, based on the entire record, the Debtor has not otherwise established a basis for the relief that he seeks.

NOW THEREFORE, it is hereby

ORDERED, that for the reasons stated herein, and based on the entire record, including the record of the July 28, 2021 hearing, the Emergency Rule 2004 Exam Request is denied.

**Dated: Brooklyn, New York
August 9, 2021**




Elizabeth S. Stong
United States Bankruptcy Judge

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